

assure a wide distribution of the property throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any property offered for disposal. The Administrator may solicit applications, by publication of a notice in the FEDERAL REGISTER, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific property for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

(4) *Loan agreement.* Property will be transferred under a loan agreement executed by the Administrator and the borrower. Any attempt on the part of the borrower to retransfer property, even to another institution for related purposes, will violate and invalidate the loan agreement, and entitle the United States to immediate repossession of the property, unless the prior approval of the Administrator has been obtained under § 904.510(d)(5). Violation of the loan agreement may also subject the violator to the civil penalties provided by the laws governing possession and transfer of the property.

(5) *Temporary reloans; documents to accompany property.* Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the property whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

(f) *Sale.* (1) Any fish, wildlife, parts or products thereof, and other property

which has been voluntarily forfeited by abandonment to NOAA may be sold or offered for sale, with the exception of any species or property which is otherwise prohibited from being sold at the time it is to be sold or offered for sale.

(2) Property will be sold in accordance with current Federal Property Management Regulations (41 CFR chapter 101) or U.S. Customs laws and regulations, except that NOAA may:

(i) Sell at fair market value perishable fish pursuant to the summary sales provisions of 15 CFR 904.505; and

(ii) Sell, destroy, or otherwise dispose of property for which it is determined the expense of keeping it is disproportionate to the value thereof.

(3) The proceeds of sale may be used to reimburse NOAA for any costs which by law NOAA is authorized to recover or to pay any rewards which by law may be paid from sums that NOAA receives.

(g) *Destruction.* (1) Property not otherwise disposed of may be destroyed.

(2) Destruction will be accomplished in accordance with the requirements of 41 CFR parts 101 through 145.

(3) When destroyed, the fact, manner, and date of destruction and the type and quantity destroyed must be certified by the official actually destroying the property.

(4) No duly authorized officer of NOAA shall be liable for the destruction or other disposition of property made pursuant to this section.

(h) *Recordkeeping.* A disposal form will be completed each time property is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the property. These forms will be available to the public.

§ 904.510 Return of seized property.

(a) *Return.* In cases where NOAA, in its sole discretion, determines that forfeiture of seized property would not be in the best interest of the U.S. Government, NOAA will make a reasonable attempt to determine the party that the facts of record indicate has a predominant ownership interest in the seized property and, provided such a determination can be made, will arrange for return of the seized property to that party by appropriate means.

(b) *Notice*. NOAA will serve a Notice of the Return of property as provided by §904.3, to the owner, consignee, or other party the facts of record indicate has an interest in the seized property. The Notice will describe the seized property, state the time, place, and reason for the seizure and return, and will identify the owner or consignee, and if appropriate, the bailee of the seized property. The Notice of the return also will state that the party to whom the property is being returned is responsible for any distribution of the property to any party who holds a valid claim, right, title or interest in receiving the property, in whole or in part. The Notice also will provide that on presentation of the Notice and proper identification, and the signing of a receipt provided by NOAA, the seized property is authorized to be released.

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec.

905.1 Scope.

905.2 Definitions.

905.3 Access to information.

905.4 Use of information.

905.5 Exceptions.

AUTHORITY: 16 U.S.C. 1853(f).

SOURCE: 60 FR 39251, Aug. 2, 1995, unless otherwise noted.

§ 905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§ 905.2 Definitions.

When used in this part:

Consenting owner means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector.

Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not lim-

ited to, any proceeding initiated to: Impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA, while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§ 905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.